

Mr. Fitzmaurice

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest Against Agency Determination of Nonresponsibility]

FILE: B-199523

DATE: October 6, 1980

MATTER OF: Lear Colorprint Corporation

DIGEST:

GAO will not question determination that protester is nonresponsible where contracting agency bases its determination on protester's past unsatisfactory performance and record provides substantial evidence in support of this finding.

Lear Colorprint Corporation (Lear) protests being found nonresponsible under invitation for bids (IFB) Nos. 313-408 and 313-441 issued by the United States Government Printing Office (GPO). However, for the reasons indicated below, we find no basis to question the agency's nonresponsibility determination.

The IFB's solicited bids for the printing of certain forms to be used by the Internal Revenue Service in its 1980 Income Tax Program. Lear was the low bidder under both IFB's, but was found nonresponsible due to unsatisfactory performance under its 1979 contracts. According to GPO, the specific reasons it found Lear nonresponsible are: late shipments, shortages, poor quality (forms not folded properly), and the reporting of erroneous shipping information.

Lear, on the other hand, blames any difficulties it had under those prior contracts on a paper shortage caused by its supplier. According to Lear, this unexpected event is the reason why it could not meet its shipping deadlines or supply the required number of forms when a shipment was made. Moreover, Lear argues that any erroneous information GPO received was due solely to the confusion caused by Lear's attempt to meet the original deadlines after it was finally able to start printing. As to the improper folding of some of the forms, Lear argues that because of the use of high-speed machines, some irregularities in folding

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are inevitable. However, Lear further contends that in light of the millions of forms it has printed, the small percentage of them not properly folded is well within the common trade practices of the printing industry.

We have recognized that the determination of a prospective contractor's responsibility--that is, its ability to deliver an item which conforms with the specifications--is primarily the function of the procuring activity and is necessarily a matter of judgment involving a considerable degree of discretion. Therefore, our Office will not disturb a determination of nonresponsibility absent a showing of either bad faith on the part of the procurement officials or the lack of a reasonable basis to support such a determination. See 49 Comp. Gen. 553 (1970); 43 Comp. Gen. 228 (1963).

The Federal Procurement Regulations (FPR) § 1.1203-1(c) (1964 ed. amend. 192) provides that in order for a prospective contractor to be found responsible it must:

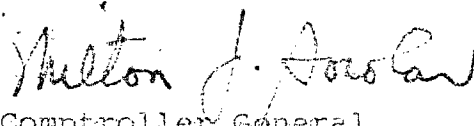
"Have a satisfactory record of performance. Contractors who are or have been seriously deficient in current or recent contract performance when the number of contracts and the extent of deficiency of each are considered (in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor) shall be presumed to be unable to meet this requirement. Past unsatisfactory performance will ordinarily be sufficient to justify a finding of nonresponsibility."
(Emphasis added.)

Our Office has also held that past unsatisfactory performance is sufficient to justify a finding of nonresponsibility provided that there is substantial evidence to support such a determination. See United Power & Control Systems, Inc.; Department of the Navy--Reconsideration, B-184662, December 27, 1978, 78-2 CPD 436.

As indicated above, GPO based its nonresponsibility determination on Lear's past unsatisfactory performance. It has documented incidents under Lear's 1979 contracts of late deliveries, short shipments, and shipments containing improperly folded forms. It has also provided proof of instances when Lear furnished erroneous shipping information to the Government. GPO claims that in its 10-year relationship with Lear and its predecessor company, it has experienced numerous minor problems, but that the problems encountered last year not only seriously inconvenienced the Internal Revenue Service but raised doubts regarding Lear's responsibility which the contracting officer was unable to resolve.

In light of the evidence presented, we cannot say that the contracting officer did not have a reasonable basis for determining Lear to be nonresponsible. As indicated above, such a determination is a business judgment on the part of the contracting officer. Thus, it was within the contracting officer's discretion to determine that Lear's paper shortage was not the mitigating circumstance that Lear believes it was. In addition, there is substantial evidence in the record to support such a conclusion. Therefore, we find no basis to question GPO's decision regarding Lear's responsibility.

Protest denied.



For The Comptroller General
of the United States